

ATTACHMENT A

Matrix of Requirements Governing DOE Assistance to States and Tribes

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| DOE PROGRAM | STATUTES/REGULATIONS/ GUIDANCE | APPLICABILITY |
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| WIPP Program (DOE-CAO) | WIPP Land Withdrawal Act of 1992 (P.L. 102-579) | The LWA states that any use of that Act “for activities not associated with WIPP shall be subject to such conditions and restrictions as may be necessary to permit the conduct of WIPP-related activities.” WIPP Land Withdrawal Act, Sec. 4, “Establishment of Management Responsibilities,” (b)(2). The LWA goes on to prescribe specific training and other assistance to be provided from appropriated funds (see Section 16, “Transportation.”). The Act does not specifically prohibit combination of funds with that of other programs. |
| Office of Civilian Radioactive Waste Management | Nuclear Waste Policy Act, as amended (P.L. 97-425, 42 U.S.C. 10101 <i>et seq.</i>) | Section 180(c) of the NWPA requires that DOE provide technical assistance and funds to states for training for safe routine transport as well as for emergency response activities, and that such technical assistance be funded by the Nuclear Waste Fund. Section 302(d) of the Act provides that the Nuclear Waste Fund may not be used to support operations not related to the disposal of radioactive waste, under Titles I and II of the Nuclear Waste Policy Act. |
| [not defined] | 42 U.S.C. §2021(g), “Responsibilities of the Department of Energy” | Requires DOE to provide technical assistance to states participating in low-level radioactive waste disposal compacts for (among other things) planning for safe transportation of low-level waste. Assistance is subject to available appropriations. |
| All Programs | Presidential Memorandum, April 29, 1994 to all Executive Agencies regarding Government-to-Government Relations with Native American Tribal Governments. | Outlines principles clarifying the federal responsibility of executive agencies in their government-to-government relationships with federally-recognized tribal governments, recognizing their unique needs. Ensures that rights of sovereign Indian tribes are fully respected through consultation, assessment of impacts of federal projects/programs on tribal trust resources. Requires that tribal concerns prior to and during federal development activities be addressed and that executive heads among the various federal departments |

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| | | cooperate with one another to accomplish goals of the memorandum. |
| All Programs | Executive Order 13084, May 14, 1998 Consultation and Coordination with Indian Tribal Governments. | Executive Order recognizes the unique legal relationship of the federal government with Indian tribal governments and the need to continue working on issues of importance to Indian tribes on a government-to-government basis. Requires executive agencies to be guided by respect for Indian tribal self-government and sovereignty in formulating policies significantly or uniquely affecting Indian tribal governments. Each agency is to have a consultation process for tribal governments to provide meaningful and timely input in development of regulatory policies on matters significantly or uniquely affecting their communities. Increases flexibility for waivers of statutory and regulatory requirements applied for by Indian tribal governments. Requires each executive agency to use as appropriate, consensual mechanisms for developing regulations including negotiated rulemaking. |
| All Programs | DOE Order 1230.2, American Indian Tribal Government Policy, April 8, 1992, reaffirmed by Secretary Federico Peña, June 10, 1998. | Outlines principles and guidance to be followed by DOE in its government-to-government interactions with federally-recognized American Indian Tribes to ensure that tribal consultation in the Department decision-making occurs which can impact upon energy, environmental and natural resources of Indian Tribes prior to DOE actions. Recognizes the trust relationship with sovereign Indian Tribes and commits the Department to take a proactive approach in consulting with Indian Tribal governments regarding tribal rights and concerns prior to DOE actions which could affect tribes. Requires the Department to work with other federal and state agencies to remove impediments to working effectively with tribes and recognizes the principle of comity with tribal and state governments. Where there are areas of cultural or religious concerns to American Indians, DOE field office must consult with tribes about potential impacts of proposed DOE actions to avoid unnecessary interference with |

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| | | traditional religious practices. |
| All Programs | 31 U.S.C. §§6301-08, “Using Procurement Contracts and Grant and Cooperative Agreements” | Governs use of grants and cooperative agreements; cooperative agreements are to be used when “substantial involvement is expected between the executive agency and the State, local government, or other recipient when carrying out the activity contemplated in the agreement.” |
| All Programs | 10 C.F.R. Part 600.200, “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments”(includes tribes). | Establishes uniform administrative rules for DOE grants and cooperative agreements and subawards to state, tribal and local governments; any grant program implemented would need to comply with its requirements (with very limited exceptions). 10 C.F.R. §600.220(a)(2) requires any state that receives funds to establish a financial tracking system that will “permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes.” |
| All Programs through the Federal Radiological Preparedness Coordinating Committee (FRPCC); NN-60 Is Lead Program; RW and EM Participate Depending on Issue | 44 C.F.R. §351.24, “Interagency Agreements, The Department of Energy” | Requires DOE to “assist state and local governments, within the constraints of national security and in coordination with FEMA, in the preparation of those portions of their radiological emergency plans related to DOE owned and contractor operated nuclear facilities and radioactive materials in transit.” and “Assist FEMA with the development, implementation and presentation to the extent that resources permit of training programs for Federal, State and local radiological emergency response personnel.” |
| All Programs | OMB Circular A-87, “Cost Principles for State, Local and Indian Tribal Governments” (found at 60 Fed. Reg. 26,484, May 17, 1995.) | Outlines general principles for determining allowable costs for Federal awards to grant recipients. Implemented by 10 C.F.R. Part 600 <i>et seq.</i> |
| All Programs | OMB Circular A-102 (Revised | Establishes consistency and uniformity among Federal agencies in |

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| | 10/7/94, As Further Amended 8/29/97), “Grants and Cooperative Agreements with State and Local Governments” (found at 62 Fed. Reg. 45,934, Aug. 29, 1997). | managing grants and cooperative agreements with state, local governments and federally-recognized Indian tribal governments. Implemented by 10 C.F.R. Part 600 <i>et seq.</i> Requires program narrative statement that outlines objectives and need for assistance, results or benefits expected; approach geographic location and other information. Requires public notice before making discretionary awards. |
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